IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

2002 JUN -5 PM 5:40

NANCY M. MAYER-WHITTINGTON
CLERK

ELOUISE PEPION COBELL, et al.,	
Plaintiffs,	
v.	Case No. 1:96CV01285
	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	
Defendants.	

DEFENDANTS' MOTION FOR LEAVE TO FILE
SURREPLY REGARDING PLAINTIFFS' FEE APPLICATION

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior") move that this Court enter an order permitting the filing of the attached Defendants' Surreply to Plaintiffs' "Reply Regarding Plaintiffs' Statement of Fees and Expenses Filed April 29, 2002 and Supporting Affidavits." In support, Interior Defendants state:

On March 29, 2002, this Court entered two orders allowing Plaintiffs to recover reasonable expenses, including attorneys' fees, arising from their opposition to two discovery motions of defendants, and incurred as a result of opposing those motions. On April 29, 2002, Plaintiffs filed their Statement seeking over $409,000 in fees and expenses. On May 13, 2002, Interior Defendants filed their Objections, and on May 23, 2002, Plaintiffs filed their Reply.

Defendants seek to file a Surreply for three reasons. First, Plaintiffs' Reply includes new evidence, consisting of supplemental affidavits of Dennis Gingold and Geoffrey Rempel. Interior Defendants have not had an opportunity to comment on that new evidence, and their proposed Surreply seeks to do so.

Second, Plaintiffs' Reply raises new arguments not posed in their original Statement, and Interior should be given an opportunity to respond to them. Additionally, the Reply cites a host of cases, although it substantially mischaracterizes their legal effect or applicability. Interior's proposed Surreply provides the more accurate description of those cases. Therefore, the Surreply should assist the Court in analyzing the legal standards.

Third, the Reply claims still more in fees than Plaintiffs sought in their original Statement. Interior is entitled to have an opportunity to respond to that additional claim.

Counsel for Interior Defendants called counsel for Plaintiffs to ask if he would agree to the relief sought by this motion, but he refused.

For the above reasons, Interior moves that this Court enter an order permitting the filing of the attached Surreply.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

SANDRA P. SPOONER
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875

(202) 514-7194

OF COUNSEL:

Sabrina A. McCarthy
Department of the Interior
Office of the Solicitor

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Plaintiffs,	)	
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Defendants.	)	
	)	

ORDER PERMITTING FILING OF SURREPLY

This matter coming before the Court on Defendants' Motion for Leave to File Surreply Regarding Plaintiffs' Fee Application, and any responses thereto, the Court finds that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the Surreply submitted by Defendants attached to said motion, shall be deemed filed as of the date on which that motion was filed.

SO ORDERED this _____ day of _____, 2002.

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

Sandra P. Spooner
John T. Stemplewicz
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-318-2372

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
202-822-0068

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

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Plaintiffs,	)	
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	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
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DEFENDANTS' SURREPLY TO PLAINTIFFS' REPLY REGARDING "PLAINTIFFS' STATEMENT OF FEES AND EXPENSES FILED APRIL 29, 2002 AND SUPPORTING AFFIDAVITS"

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior") state the following as their Surreply to Plaintiffs' Reply regarding Plaintiffs' Statement of Fees and Expenses Filed April 29, 2002, and Supporting Affidavits (the "Reply").

I. Introduction

Despite their submission of new affidavits, Plaintiffs' Reply fails to overcome the showing in Defendants' Objections to Plaintiffs' Statement of Fees and Expenses filed April 29, 2002 (the "Objections"), filed May 13, 2002, that Plaintiffs claimed fees for work beyond the scope of the Court's orders allowing recovery, the amounts they claim are unreasonable, and a number of the rates they assert are insufficiently supported. Most conspicuous in their Reply is the absence of even a denial that one of their attorneys, Dennis Gingold, submitted a false or

misleading affidavit to this Court.[1]

II. Plaintiffs Failed Even to Make a Prima Facie Showing That They Are Entitled to The Fees They Claim

Plaintiffs erroneously try to turn the tables and claim that Defendants had the burden of providing evidence to counter Plaintiffs' claim. But at page 1 of their Reply, they concede, as they must, that a challenger to a fee application has a burden of proof only "after the applicant has made a prima facie showing of the adequacy of the rate charged." (Emphasis added.) Thus, Plaintiffs had the burden of making a prima facie showing of (1) what the market rates are for an attorney (or expert) with the requisite experience; and (2) that their attorneys and putative expert each qualifies for the rate he claims.[2] See Covington v. District of Columbia, 57 F.3d 1101, 1108 (D.C. Cir. 1995).

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[1] We will not waste the Court's time responding to Plaintiffs' Reply's irrelevant allegations (e.g., against "government lawyers" generically (not even limited to this case)(Reply (at 6-7)), or grousing about discovery disputes (id.) not part of this fee proceeding). We simply deny the allegations of wrongdoing asserted in the Reply.

[2] None of Plaintiffs' cited cases (Reply at 1-3) excuses them from their burden of making the requisite prima facie showing, for in those cases in which the courts accepted the applicant's rates, the applicant provided sufficient, competent evidence. This stands in stark contrast to Gingold's unsupported conclusions and reference to the wrong standards (discussed above). See Sexcius v. District of Columbia, 839 F. Supp. 919, 922-23 (D.D.C. 1993)(relied upon Laffey matrix and another matrix); see also Nat'l Assoc. of Concerned Veterans v. Sec'y of Defense, 675 F.2d 1319, 1326 (D.C. Cir. 1982)(discussing proof of what the rates in the market are, and noting there may be occasions, although not the norm, "in which the applicant's showing is so weak that the Government may without more simply challenge the rate as unsubstantiated"); Covington v. District of Columbia, 57 F.3d 1101, 1102 (D.C. Cir. 1995)(applicant provided declarations plus Laffey matrix and U.S. Attorneys office matrix); Palmer v. Schultz, 679 F. Supp. at 71 (applicant provided twenty affidavits from Washington, D.C. law firms); Thompson v. Kennickell, 710 F. Supp. 1, 4 (D.D.C. 1989)(awarded fees based upon actual rates of a large, well-known Washington, D.C law firm); Council of Southern Mountains v. Hodel, No. 79-1521, WL 72 (D.D.C. Sept. 26, 1985)(applicant provided affidavits of other lawyers to establish the hourly fees charged in the community).

On the first point (what are the market rates), we objected only to Dennis Gingold's claimed hourly rates of $425 to $475 (or, times the 115% which he claims, $488.75 to $546.25).[3] Gingold's April 29, 2002 affidavit failed to prove that those figures are, in fact, market rates. Plaintiffs' own cited cases (Reply at 1-2) show that Gingold failed to meet his burden. See Nat'l Assoc. of Concerned Veterans v. Sec'y of Defense, 675 F.2d at 1326 (the affiant "should be able to state, for example that [his belief about what the market rate is] was formed on the basis of several specific rates he knows are charged by other attorneys. . . . [The district court's task in determining rates] is aided little by an affidavit which just offers one attorney's conclusory and general opinion on what that rate is"); see also Plaintiffs' cited case of Palmer v. Schultz, 679 F. Supp. 68, 70 (D.D.C. 1988)(applicant "submitted affidavits from members of over twenty Washington, D.C. law firms documenting the history rates these attorneys charged . . . .")

By these standards, Gingold's affidavits fail. First, he offers only his conclusions about what the market rates are. His latest, May 23, 2002, Affidavit (at 2) contains his conclusory statements that his $425 - $475 rates are "more in line" with what unspecified other attorneys in unspecified locales, who "possess comparable expertise and assume similar responsibilities in complex financial matters such as this" charge. That is not sufficient. He does not specify what market he refers to. Even more importantly, he refers to "complex financial matters," but he does not refer to the actual legal standard, which is "complex federal litigation." (Emphasis added.) Covington v. District of Columbia, 57 F.3d at 1103. That is a distinction which can make all the difference in the world, because it is irrelevant what rate may be charged by lawyers who work

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[3] For purposes of the present fee proceeding only, we did not dispute that the other attorney rates claimed (from $170 to $350 per hour) were market rates. Rather, we objected that attorneys Gingold and Brown did not establish that they qualified for those rates.

on lucrative, complex financial matters outside of litigation (e.g., transaction work involving mergers and acquisitions, Wall Street financing, and so on). All that is relevant here is what is charged in the market for complex federal litigation, and Gingold offers insufficient proof to support his claimed rate for that work.

Second, Gingold's May 23, 2002 Affidavit includes exhibits that purport to be fee agreements, but they prove little, because what is relevant is what the market rate is. Gingold's April 29, 2002 Affidavit admits that he performs only "limited" work outside of this case. Even if Gingold can obtain an excessive rate from one or two clients on such limited matters, that does not establish the market rate in this locale – especially in light of Plaintiffs' own contradictory evidence (see below).[4]

Third, conspicuously absent from either of Gingold's affidavits is an explicit statement of how much he charges Plaintiffs in this case. For all that appears in his affidavits, he now may be charging them nothing, instead hoping to collect from, perhaps, the government or under his "common fund" theory. See Interior's Objections at 31. Although he attached what he labeled "billing statements" to his original affidavit, nowhere does he swear that he actually charges these amounts to Plaintiffs. Considering that his original affidavit (¶ 6) states that this case is his

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[4] Moreover, Gingold's Exhibit 1 appears to be an agreement with Mona Infield (see the addressee line, "Dear Ms. Infield"), presumably relating to her legal disputes pertaining to this matter. But a potentially significant portion of the last paragraph on page 1 is redacted. The second sentence of that paragraph excuses the client from Gingold's allegedly normal requirement that clients submit a retainer to cover out-of-pocket costs. The next sentence suggests a further concession, for it begins, "[a]lso, because of the unique circumstances of [redacted]," thus suggesting that a further concession has been given. We have no way of knowing whether, because of the supposedly "unique circumstances of [redacted]," Gingold has excused the client from actually having to pay his very high hourly rates stated earlier in the letter.

principal work ("7 days a week"), his silence about his charges in this case leaves a gaping hole in his proof of the rates that he really can command in the marketplace.

Moreover, Plaintiffs' own evidence (i.e., the Laffey matrix attached to Plaintiffs' attorney, Mark Brown's Affidavit (an exhibit to Plaintiffs' Statement)) belies Gingold's claimed rate, for the Laffey matrix shows the market rate to be $340 to $350 per hour. Because Plaintiffs failed to meet their burden of proving Gingold's claimed rate, and because their own evidence proves his rate is improper, Defendants had no obligation to produce affidavits to the contrary.

The only other rates we challenged are those claimed by Mark Brown and Geoffrey Rempel. With regard to Brown, we did not dispute that the rate he claims ($350) is the market rate for lawyers with 20 or more years of the requisite experience. Rather, we argued that he failed to show that he qualifies for that rate, because his affidavit fails to specify what type of litigation experience he has and whether it involved complex, federal cases. Plaintiffs' Reply fails to distinguish Griffin v. Washington Convention Center, 172 F. Supp. 2d 193, 199 (D.D.C. 2001), and Plaintiffs deceptively suggest that their quoted excerpt (Reply at 4 n. 2) of the decision is the entire holding on this point. Unfortunately, Plaintiffs leave out other language that is directly applicable to Mark Brown's faulty affidavit. Speaking of one of the other junior lawyers (who, contrary to Plaintiffs' false statement, does not appear to have been a first-year lawyer), the Griffin court stated:

> Counsel's other associate, Shannon Salb does not fare much better. Counsel asks that he be compensated at the same rate as Suarez, i.e., at the current rates for an attorney with four to seven years of trial experience. But, Salb was admitted to the District of Columbia bar in 1996 and is yet to try his first Title VII case; . . . While he is said to have been 'lead counsel in numerous litigations' [citation to affidavit omitted], these litigations are not described

> and there is therefore no basis upon which to describe them as complicated, federal litigation."

Griffin, 172 F.2d at 199 (emphasis added). The underscored language is exactly the complaint that we lodged against Brown's Affidavit, for he fails to describe any of his other litigation experience and fails to show that he has any experience in "complicated, federal litigation."[5] Because Brown failed to offer even prima facie evidence that he qualifies for the Laffey rate he claims, Defendants had no obligation to proffer any counter-evidence.

Our objection to Rempel's (the non-lawyer's) claimed rate ($225 per hour) was that, first, he failed to offer proof that he could command that figure for expert work, but, second and even more importantly, Plaintiffs failed to show that he did any genuine "expert" work, rather than mere clerical or paralegal-level work. Because Plaintiffs did not satisfy their burden of proof, Interior had no obligation to come forward with affirmative proof of its own.

The Reply includes a new affidavit from Rempel, dated May 23, 2002, but it fails to cure the deficiency. He asserts (at 3) that he is a CPA, engaged in the practice of complex financial litigation consulting. As shown by the case law cited in Interior's Objections (at 34), the important point is not his position, but the nature of the work he did. The two motions at issue here did not require a CPA, nor did they involve expert handling of "complex financial" issues, but instead involved straightforward legal and factual issues regarding document production in discovery. Rempel fails to show how any of his efforts involved expert training in accounting or finance. Further, as shown in our Objections (at 33, n. 37), his time records show that he spent

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[5] Notably, Plaintiffs' Reply fails even to try to shore up their failed showing of Brown's experience. Reply at 17, n.14. Plaintiffs decline to say what his experience was. Never ones to shy away from a dispute, their refusal to come forward with details shows they are defenseless on this point.

much time performing clerical work (drafting facts) and even messenger-level tasks (faxing, filing, and delivering papers, or making photocopies). Regardless of whether he is a CPA, he was not performing in that role.

Plaintiffs (Reply at 5) turn the law on its head by suggesting that, if an opponent submits no affidavit, then the Court must adopt an insufficient affidavit from the applicant. Obviously, that is not true. See Nat'l Assoc. of Concerned Veterans v. Sec'y of Defense, 675 F.2d at 1326 (observing that there are situations "in which the applicant's showing is so weak that the Government may without more simply challenge the rate as unsubstantiated").

III. Plaintiffs' Reply Fails to Cure Their Insufficient Showing That Their Claim Is Reasonable in Scope and Amount

A. Plaintiffs' Reply Cites Inapposite Authorities, And Further Admits That Their Claimed Work Is Not Recoverable

Plaintiffs spend almost four pages of their Reply (at 8-11) discussing the cases of Westmoreland v. CBS, Inc., 770 F.2d 1168 (D.C. Cir 1985), and Tamari v. Bache & Co., 729 F.2d 469 (7th Cir. 1984). Neither supports Plaintiffs' arguments, for those cases merely held that a party entitled to sanctions could also recover the costs incurred on appeal regarding the award of sanctions. Westmoreland, 770 F.2d at 1179; Tamari, 729 F.2d at 475. That point has nothing to do with the issues here.

Plaintiffs' cited case (Reply at 11-12) of Hudson v. Moore Business Forms, Inc., 898 F.2d 684 (9th Cir. 1990), is also inapposite. The court awarded fees for an additional 17-plus hours of work that it found were related to the sanctionable claim. 898 F.2d at 686-87. But that point begs the question here. Interior's Objection (at 1-12) showed that, by Plaintiffs' own descriptions of their work, most of the claimed time is outside the scope of the matters on which the Court

allowed recovery.

Plaintiffs' Reply further dooms their fee application. First, they concede (Reply at 8) that they accept the "near but for" test of what is recoverable. Second, Plaintiffs' own remarks concede that their application includes non-recoverable work, involving their allegations of "fraud and email destruction" (Reply at 12, section C). Although Plaintiffs somehow manage to work their false allegations of "fraud" into seemingly every paper they file – regardless of how irrelevant to the matter at hand – the fact is that those allegations were not the issue in the two motions as to which the Court has allowed recovery.

Plaintiffs have the burden of proving exactly how their claimed work on alleged "fraud" was necessary to oppose the discovery motions at issue, and even if so, why the extraordinary amount of time they spent on such extraneous issues is reasonable for compensation with regard to these motions. Their conclusory comments fail to meet that burden.[6]

Plaintiffs' cited cases (Reply at 15) do not support their argument. Those cases involved situations in which courts examined whether fees claimed by prevailing plaintiffs could be apportioned among successful claims for which the law allowed recovery, as distinct from failed claims or claims as to which applicable law did not allow recovery of fees.[7] The basic facts of

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[6] For example, the Rempel 4th Affid. (at 1-2) repeatedly asserts that work was "relevant" and "beneficial," but he fails to articulate how or why. The Rempel 4th Affid. (at 2) states that work on the Surreply was "relevant and beneficial" to the October 27, 2000 hearing. Because the Special Master determined the brief was unnecessary, any oral use of the information was equally superfluous. Moreover, the hearing lasted about 90 minutes, and Plaintiffs fail to show how the extensive time they spent on the unused Surreply was genuinely necessary during the short hearing.

[7] For example, in Hudson v. Moore Business Forms, 898 F.2d at 687, a counterclaim was not frivolous, but the damages claimed were frivolous. Because the work in defending the against the counterclaim and the amount of damages sought were so closely connected, the court

and relief sought by the Email Motion and the Trade Secrets Motion (on which this Court allowed recovery) are fundamentally distinct and divisible from the facts of and relief sought by the motions on which fees have not been allowed, i.e., the 3/20/02 Contempt Motion and the post-March 29, 2000 motions to modify the March, 2000 Discovery Order. Plaintiffs' counsels' time records show, in large part, which hours were spent on the recoverable versus the non-recoverable matters, so, in this case, the work is sufficiently segregable.

Plaintiffs argue (Reply at 16) that their present application may recover "for all consequential expenses (including attorneys' fees) that flow from [Defendants' alleged] sanctionable conduct." But the flaw in their position is that the only "conduct" for which they were allowed recovery is the Defendants' filing of the Email Motion and the Trade Secrets Motion, not all alleged conduct pertaining in any way to email or all other discovery disputes. In effect, Plaintiffs have appointed themselves judge, as though they can self-assess sanctions for any and all violations that they perceive, without first even having to ask for relief from the Court.

B. Plaintiffs Fail to Overcome the Showing That Their Entire Fee Application Should Be Denied

Interior's Objections (at 3-12) made a strong showing that, under Environmental Defense Fund v. Reilly, 1 F.3d 1254 (D.C. Cir. 1993), Plaintiffs' entire fee application should be denied.

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awarded 25% of the time spent. See also Turgeon v. Howard University, No. 81-2973,1983 WL 603 (D.D.C. November 16, 1983)(civil rights case which included statutory and common law claims; but the claims arose out of the same injury, so they were not divisible); Brinderson - Newberg Joint Venture v. Pacific Erectors, Inc., 971 F.2d 272, 283 (9th Cir. 1992)(by state statute, prevailing parties on contract claim could recover fees; court allowed recovery of fees defending misrepresentation and other claims only "to the extent the fees were incurred litigating issues common to the contract claims").

Plaintiffs' Reply (at 17) offers a notably weak one-page (plus two lines) response to the issue. Plaintiffs' only argument appears to be that Environmental Defense Fund v. Reilly might only justify disallowing the fees of each lawyer who submits an improper claim. First, that is not what Environmental Defense Fund v. Reilly states, for the court recognized that an entire fee application can be disallowed, although on the facts before it, the Court only disallowed one lawyers' fees.

Second, even under Plaintiffs' reading, their entire application should be denied. Interior's Opposition carefully and in great detail showed that each of the persons who claims fees in Plaintiffs' application included work on matters so clearly outside of the motions as to which this Court awarded fees that their conduct must be deemed to have been improper, and each deserves to take nothing in this fee application.

Gingold's conduct is especially egregious, however, for, as discussed below, he appears to have submitted one or more false or misleading Affidavits.

IV. Plaintiffs' Fail to Respond to, and Thus Must Be Deemed to Concede, the Allegation That Dennis Gingold Submitted a False or Misleading Affidavit In Support of the Fee Application

Interior's Objections at 31-32 showed that Gingold apparently has submitted at least one false or misleading affidavit to this Court. In his 1999 affidavit, he swore as follows regarding his rates:

> Through June 5, 1998, my billing rate was $325 an hour, plus 15% for overhead. After June 5, 1998, my fee arrangement was for $200 per hour plus 15% overhead . . . .

Yet in his April 29, 2002 Affidavit (¶ 6), he swore that, "[t]hrough December 31, 1999, my billing rate had been $325.00 an hour, plus 15% for overhead . . . ." He stated that this had been

his rate "since 1989." Id.

Interior's Objections noted the obvious discrepancy, pointing out that Gingold apparently either misled the Court in 1999 or is doing so now. Plaintiffs' Reply says not one word denying the allegations. Their silence speaks volumes.

On the contrary, Gingold's new affidavit dated May 23, 2002, repeats his assertion that his rate has been $325 (plus 15%) per hour from 1989 through 1999, and he again leaves out any reference to his prior (1999) sworn statement that, after June 5, 1998, his rate was only $200 per hour (plus 15%).[8] Rather, he tries to finesse his misstatement by now saying that the $325 (plus 15%) rate was what he "generally" billed since 1989. But the rates he has charged in this case (which, by his sworn admission (see above), is his "7 day[] a week" occupation), are a material fact in this fee proceeding. His statement that his billing rate has been $325 (plus 15%) since 1989, while omitting any reference to the $200 (plus 15%) that he previously claimed he charged in this case since June, 1998, is tantamount to a false or misleading sworn statement to the Court. This alone is a sufficient basis to deny him any recovery of fees.[9]

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[8] Gingold's May 23, 2002, Affidavit states:

> Through December 31, 1999, my billing rate had been $325.00 an hour, plus 15% for overhead (a formula accepted by this Court in its decision on fees and expenses in the First Contempt Opinion). This is the standard hourly rate that I generally had billed and collected since 1989. After more than 10 years at this particular rate, on January 1, 2000, I changed my standard hourly rate . . . .

[9] Further investigation and actions with regard to Gingold's apparent submission of a false or misleading affidavit may be warranted.

V. Plaintiffs' Work in Preparing Their Fee Application Should Be Denied or Substantially Reduced

Plaintiffs' Reply (at 18-19) misses the point regarding the extraordinary amount of time they spent calculating their time. While they might have recorded time contemporaneously, what they did not do was to segregate it separately as to each of the two particular motions as to which they sought and were awarded fees and expenses. Their original affidavits expressly admitted this. See Gingold's April 29, 2002 Affidavit (¶ 4); Brown Affidavit (¶ 3). Further, Brown admitted that "it took considerable time and effort" to prepare the fee application "because" he did "not maintain[] segregated records" regarding those two motions. (Emphasis added.)

Plaintiffs should not be allowed to recover any fees pertaining to preparation of their Reply. First, much of the their Reply reflects an inadequate attempt to make up for obvious deficiencies in their original Statement. Even Plaintiffs' own cited case of Turgeon v. Howard University, 1983 WL at *3, denied recovery for a supplemental fee petition, stating, "[t]here is no excuse for counsels' failure to submit a fee petition initially which would have complied with the law of this Circuit."

Second, Plaintiffs' Reply contains an inordinate amount of *ad hominem* remarks and allegations of wrongdoing having nothing to do with this fee proceeding. To the extent that they chose to waste their time on such matters, the cost was not incurred "as a result" of the two motions at issue, and should not be passed on to Defendants.

Conclusion

For the foregoing reasons, Plaintiffs' entire fee application should be denied.

Alternatively, it should be reduced to the amounts discussed in Interior's Objections.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

SANDRA P. SPOONER
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

OF COUNSEL:

Sabrina A. McCarthy
Department of the Interior
Office of the Solicitor

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on June 5, 2002 I served the Foregoing *Interior Defendants' Motion for Leave to File Surreply Regarding Plaintiffs' Fee Application, and the Attached Defendants' Surreply to Plaintiffs' Reply Regarding "Plaintiffs' Statement of Fees and Expenses Filed April 29, 2002 and Supporting Affidavits"*, by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-318-2372

By U.S. Mail upon:

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By Facsimile and U.S. Mail:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006
(202) 986-8477

Courtesy Copy by U.S. Mail:

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004

K.P. Kingston

Kevin P. Kingston

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
GALE NORTON, SECRETARY OF THE INTERIOR et al.,	)	**No. 1:96CV01285 RCL**
	)	**(Hon. Alan L. Balaran, Special Master)**
	)	
	)	
Defendants.	)	
	)	

UNITED STATES' STATUS REPORT TO THE SPECIAL MASTER OF JUNE 25, 2002

The United States submits this status report every other Tuesday pursuant to the Special Master's instruction.

I. DEPARTMENT OF THE INTERIOR

In biweekly status reports since December 2000, Interior has reported that it is assessing the conduct and completeness of its Paragraph 19 search and production. This assessment is ongoing.

Interior has been working with a potential contractor to develop a solution for compliance issues relating to e-mail retention, search, and production. In a February 20, 2002 letter, we provided the Special Master and counsel for the Plaintiffs with information and requested feedback regarding a proposed solution, in the form of a searchable e-mail archive operated by a third party. The proposed e-mail solution would, if acceptable and when implemented, allow the restoration, preservation, and search for potentially responsive material currently stored on e-mail backup tapes and create a real-time searchable e-mail archive for future e-mail traffic. As we

indicated in the June 11 biweekly report, Interior is prepared to file a motion seeking approval of the proposed e-mail solution. The Special Master requested a presentation regarding the proposed e-mail solution (see our June 20, 2002 letter), and, after consultation with Interior, ZANTAZ, and counsel for the Plaintiffs, that presentation is scheduled for Thursday, July 18, 2002 at 2:00 p.m. (see our June 21, 2002 letter).

In accordance with the Special Master's letter of March 19, 2002, Interior began production on Friday, March 29, of documents relating to the proposed transfer of records from OST warehouses in Albuquerque, New Mexico, to the Federal Records Center in Lee's Summit, Missouri. The last production was on Friday, June 21, 2002, and Interior continues to search for responsive materials. As confirmed in the May 9, 2002 letter to the Special Master, Interior will provide verifications (pursuant to Local Civil Rule 5.1) regarding its search for and production of relevant documents at the end of the production.

II. DEPARTMENT OF THE TREASURY

Treasury continues to preserve its IIM-related documentation pursuant to the Order Regarding Treasury Department IIM Records Retention dated August 12, 1999. On July 9, 2001, counsel filed the "Motion for a [New] Treasury Department Document Retention Order and Replacement of Paragraph 6 of the Stipulation Entered July 6, 1999." In response, on July 16, 2001, Plaintiffs filed a motion for an enlargement of time to respond to Treasury's motion. On the basis of Plaintiffs' motion for enlargement, but prior to the time permitted for Treasury to file a brief, the Special Master issued an order on July 22, 2001, which granted Plaintiffs extension of

time to respond to Treasury's motion for a new document retention order until three pending motions are decided. Specifically, the Special Master ordered that Plaintiffs need not respond to Treasury's motion until the following motions have been ruled on: (1) Plaintiffs' Cross-Motion for an Effective Document Preservation Order; (2) Plaintiffs' Motion for Special Master to Investigate Treasury Document Destruction in the Denver Branch of the Federal Reserve Bank of Kansas City and Elsewhere and Recommend Corrective and Disciplinary Measures; and (3) Treasury's Motion for Determination that it has Purged Contempt. On July 23, 2001, Treasury moved for reconsideration of the Special Master's July 22, 2001 order, requesting that the Plaintiff's motion for enlargement of time be denied in its entirety. At this time, Treasury awaits rulings on its motion for reconsideration of the Special Master's July 22, 2001 order and its motion for a new document retention order.

In addition, Treasury awaits a ruling on its May 1, 2001 motion for a determination that it has purged contempt. On June 18 and 19, 2001, Treasury made its presentation to the Special Master on its compliance with Paragraph 19 of the Court's November 27, 1996 First Order for the Production of Information in support of the May 1 motion.[1] In response to Treasury's presentation, Plaintiffs served their Third Set of Interrogatories, propounding more than 1,500 interrogatories (including sub-parts). On July 13, 2001, Defendants filed a motion for protective order to relieve the Defendants of the obligation to respond to Plaintiffs' Third Set of

[1] To the extent that Treasury receives additional tapes of predicate information regarding Paragraph 19 from the Department of the Interior in the future, it will, of course, process that information in the manner described in the Search Plan. See United States' Status Report to the Special Master, June 11, 2002.